ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of November 15, 2008

SUPPLEMENTAL REPORT

DATE: November 18, 2008

SUBJECT: Approval of the Deed of Lease between 1101 WILSON OWNER, LLC, as Landlord, and The County Board of Arlington County, Virginia, as Tenant, for 53,826 Square Feet of Space in a Portion of a Building Located at 1101 Wilson Boulevard, Arlington, Virginia (RPC # 16-039-002).

DISCUSSION: County staff and the Landlord have agreed to insert a revised Table of Contents, a revised Page 10 and a revised Exhibit G (collectively referred to herein as the "Lease Revisions"), to the Lease (attached hereto as "Attachment 1", "Attachment 2", and "Attachment 3", respectively), which Lease Revisions provide the County with an absolute right and option, without further liability, penalty, or further obligation, to terminate the Lease effective as of June 30, 2009 (the "Termination Right"). The County can exercise this Termination Right provided the County is not in default under the terms of the Lease beyond applicable notice and cure periods.

If the County exercises its Termination Right, the Landlord shall, on or before December 31, 2009, pay the County an amount equal to the remaining abated rent (as provided in the Abated Rent Schedule attached to the Lease as Exhibit E), less the operating expenses and real estate taxes for the period from June 30, 2009 to December 31, 2009. The value of the remaining abated rent as of December 31, 2009 will be approximately $7 million, and the estimated operating expenses and real estate taxes for the period from June 30, 2009 to December 31, 2009 is approximately $300,000. Therefore, if the County exercises its Termination Right, the payment the County would receive from the Landlord for the value of the abated rent would be approximately $6.7 million.

Additionally, if the County exercises its Termination Right, the Landlord may exercise its Conversion Option by providing the County with written notice within thirty days after June 30, 2009. If the County exercises its Termination Right and the Landlord exercises its Conversion Option, the Landlord shall pay the Conversion Option Payment (as determined pursuant to Section 45 of the Lease), currently estimated to be approximately $3 million dollars, to the County on or before the later of: 1) December 31, 2009; or 2) thirty (30) days after the Conversion Option Payment has been determined pursuant to Section 45 of the Lease). The revised Exhibit G specifically states that in no event will the use restrictions encumbering portions of the leased space be released before the Landlord pays the Conversion Option Payment and the abated rent to the County.

County Manager: _____

County Attorney: _____

Staff: Michael R. Halewski – DES, Real Estate Bureau

ATTACHMENT 1

DEED OF LEASE

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Exhibit A Plans Showing Demised Premises
Exhibit B Declaration of Acceptance
Exhibit C Terrace Area Plan
Exhibit D Rules and Regulations
Exhibit E Base Rental Revenue for the Demised Premises
Exhibit F Subordination, Nondisturbance and Attornment Agreement
Exhibit G Tenant's Option to Terminate
Exhibit H Memorandum of Lease
Exhibit I Memorandum of Lease Termination
Exhibit J Plat
Exhibit K Location of Tenant's Exterior Signage
Exhibit L Schedule of Categories of Operating Expenses Attributable to Portions of Common Areas Located on One or More Floors of the Building on Which No Space is Leased to Tenant and On or from Which There is No Access to the Demised Premises
and
Schedule of Categories of Operating Expenses Attributable to Portions of Common Areas Located on One or More Floors of the Building on Which the Demised Premises are Located, or On or from Which There is Access to the Demised Premises, but Not Susceptible to Cost Allocation Solely to Tenant
and
Schedule of Categories of Operating Expenses Attributable to Portions of Common Areas Located on One or More Floors of the Building on Which the Demised Premises are Located, or On or from Which There is Access to the Demised Premises, and Susceptible to Cost Allocation Solely to Tenant
Exhibit M [*Intentionally Omitted*]
Exhibit N Schedule of Existing Personalty
Exhibit O Form of Bill of Sale
Exhibit P [*Intentionally Omitted*]
Exhibit Q Landlord's Payment Information

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declaration in the form attached hereto and made a part hereof as Exhibit B, which declaration shall confirm the Effective Date and the Lease Commencement Date. Notwithstanding any other provision, term or condition of this Lease, Tenant shall have the right to terminate this Lease pursuant to the Tenant's Option to Terminate attached hereto and made a part hereof as Exhibit G.

3. AS-IS CONDITION; LANDLORD'S WORK.

A. Landlord shall deliver the Demised Premises to Tenant in its "as-is" condition as of the Lease Commencement Date; provided, however, that Landlord shall, at its sole cost and expense do the following (it being agreed that Operating Expenses shall not include any repairs or replacements required to comply with Applicable Law with respect to conditions existing in violation thereof on the Commencement Date (unless the violation is solely caused by Tenant)):

(1) Ensure that, as of the Lease Commencement Date, the Demised Premises is free of all Hazardous Materials (as defined in Section 39 below), and that all electrical, mechanical (including without limitation, elevators and escalators), plumbing and life safety systems serving the Demises Premises are in working condition prior to the beginning of the Initial Term;

(2) Ensure that, as of the Lease Commencement Date, and at all other times during the Term, the Demised Premises, excluding the Terrace Area, is equipped with code-compliant, operational smoke detectors, operational fire alarms, and, an operational sprinkler system, unless necessitated by any Alterations of the Demised Premises by Tenant or any of Tenant's Transferees (as defined below), in which event such compliance is Tenant's responsibility, for its specific use;

(3) Ensure that, as of the Lease Commencement Date, and at all other time during the Term, Landlord shall provide barrier-free accessibility to the Common Areas, and Landlord shall adhere to the requirements of the Americans with Disabilities Act and the regulations promulgated thereunder (the "ADA") on an ongoing basis as Building modifications are undertaken by Landlord or other tenants of the Building other than Tenant. As of the Lease Commencement Date, to the best of Landlord's knowledge, the Building's Common Areas are in compliance with the ADA; provided, however, that Tenant, at its sole cost and expense, shall be responsible for the correction of any non-compliance of the Common Areas with the ADA resulting from any Alterations made by Tenant which relate to "path of travel" requirements, as set forth in the ADA, and similar accessibility requirements set forth in the ADA. In the event that Tenant desires a higher standard of accessibility in or through Common Areas than is provided for in the ADA, Tenant shall have the right to request that Landlord make such improvements and modifications as Tenant desires, at Tenant's sole cost and expense, and Landlord shall advise Tenant whether Landlord elects to make such improvements and modifications, which election shall be made by Landlord in its sole and absolute discretion. In the event that Landlord elects not to make such requested improvements and modifications, Landlord shall advise Tenant, for informational purposes only, of the basis for Landlord's decision.

(4) As of the Lease Commencement Date, Landlord makes no representation that the Demised Premises, including, without limitation, the Terrace Area, are in compliance with the ADA.

B. Simultaneously with Landlord's execution of this Lease, Landlord shall convey the ownership of and to the Existing Personalty to Tenant pursuant to a Bill of Sale in the form attached hereto and made a part hereof as Exhibit O, which Bill of Sale shall contain warranties

EXHIBIT G

TENANT'S OPTION TO TERMINATE

A. Tenant shall have the absolute right and option, without liability, penalty or further obligation, to terminate the Lease (the "***Termination Right***") effective as of June 30, 2009 (the "***Termination Date***"), subject to the following terms and conditions:

(1) At the time of the exercise of the Termination Right and at all times thereafter through to the Termination Date, Tenant is not in Default under the Lease beyond any applicable notice and cure period.

(2) Tenant shall provide Landlord with written notice of the exercise by Tenant of the Termination Right (the "***Termination Notice***") at any time after the Effective Date and prior to the Termination Date. Irrespective of when Tenant provides the Termination Notice, the termination of the Lease shall not be effective until the Termination Date.

(3) If Tenant terminates the Lease pursuant to the Termination Right, then, Landlord shall, on or before December 31, 2009 (the "***Payment Deadline***"), pay to Tenant an amount (the "***Net Abated Rent***") equal to (i) the balance, as of the Termination Date, of the remaining abated rent as provided in the Abated Rent Schedule attached to the Lease as Exhibit E, less (ii) an amount equal to the additional rent that would have been due and payable by Tenant for Operating Expenses and Real Estate Tax Expenses under and pursuant to the terms of Section 5 of the Lease during the time period from the Termination Date to the Payment Deadline. Such Net Abated Rent shall accrue interest at the Default Rate (as defined in Section 16 of the Lease) from the Payment Deadline until the date when fully paid. This payment obligation of Landlord shall survive the expiration or earlier termination of the Lease. If Tenant exercises the Termination Right as aforesaid, then Landlord may exercise the Conversion Option pursuant to Section 45 of the Lease by providing Tenant with written notice of Landlord's exercise of the Conversion Option within thirty (30) days after the Termination Date; specifically provided, however, that, as a condition subsequent to Landlord's exercise of the Conversion Option, Landlord must pay Tenant the Conversion Option Payment on or before the later of (a) the Payment Deadline, or (b) thirty (30) days after the amount of the Conversion Option Payment is determined pursuant to Section 45 of the Lease, and, irrespective of the above, Landlord must pay Tenant the Net Abated Rent on or before the Payment Deadline. It is understood and agreed that in no event shall the Use Restriction be released prior to the payment by Landlord to Tenant of the Conversion Option Payment and the Net Abated Rent.

B. If the Tenant timely and properly exercises its Termination Right in compliance with the foregoing terms and conditions, then the Lease shall terminate on the Termination Date in the same manner as if said date had been the originally scheduled date for the expiration of the Term. If the Termination Right is properly and timely exercised hereunder, then, Landlord and Tenant shall, within ten (10) business days thereafter, execute and record a Memorandum of Lease Termination in the form attached to the Lease as Exhibit I, confirming such termination; provided, however, a failure to execute and record such Memorandum of Lease Termination shall not alter or affect the termination of the Lease hereunder.

ATTACHMENT 4

VICINITY MAP

1101 WILSON BOULEVARD
Lease

November 15, 2008